

REMARKS

Claims 76-89 are pending in the application. Claims 76-89 are rejected. Claim 77 is amended. Applicant requests consideration of the following remarks and allowance of the claims.

Informalities

Claim 77 is amended to depend from claim 76, rather than previously canceled claim 1 as noted by the Examiner in the recent Office Action.

35 U.S.C. § 112 Rejection

Claim 76-89 are rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Specifically, the Examiner asserts that the claims contain subject matter not described in the specification in a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed.

In particular, the Examiner contends that enough implementation details are not given to enable one skilled in the art to make or use the access device used at the customer premises (page 4, last paragraph of the recent Office Action).

Applicant respectfully directs the Examiner's attention to paragraph 0033 of the Specification wherein the access device is described as a combination of one or more of a field programmable gate array (FPGA), an application specific integrated circuit (ASIC), and a digital signal processor (DSP). Additionally, the specification teaches that the FPGA, ASIC, and DSP could be configured via software to emulate a variety of access technologies, modulation schemes, standards, and protocols. One skilled in the art would recognize this teaching as software radio which, at the time the application was filed, was a well known technology that uses software for the modulation and demodulation of radio signals. Thus, the access device recited in the claims is sufficiently supported by the specification.

35 U.S.C. § 102(e) Rejection

Claims 76-81 and 83-88 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,562,581 (Edson). Applicant respectfully traverses the rejection for at least the following reasons.

Claim 76 requires a premises device located on a customer premises and configured to transmit a plurality of communications for a plurality of services to a service provider network using a plurality of access technologies. Claim 76 further requires an access device located at the customer premises and configured to receive first communications for a first service using a first access technology, determine if the first access technology is acceptable for the first service, transfer the first communications to the service provider network using the first access technology if the first access technology is acceptable for the first service, and determine a second access technology different from the first access technology and transfer the first communications to the service provider using the second access technology if the first access technology is not acceptable for the first service.

Edson fails to disclose an access device configured to *determine if a first access technology is acceptable* for a first service. Furthermore, Edson fails to disclose an access device configured to determine a second access technology different from the first access technology and transfer the first communications to the service provider using the second access technology if the first access technology is not acceptable for the first service.

Rather, Edson discloses gateway 13 that provides a routing functionality between wide area links and interfaces to one or more internal media 21 and 23. Gateway 13 interfaces to service providers over several different types of access technologies, such as CATV, X-LINK and ADSL (FIG. 1). Gateway 13 then interfaces with premises devices over several different premises technologies, such as a power line 23 or twisted pair 21. Furthermore, gateway 13 is capable of interfacing at the application layer with various premises devices, such as a computer 43, a television 42, or a phone 32. However, gateway 13 does not determine which access technology to use between it (gateway 13) and a service provider. Rather, a particular service, such as television service, is provided to gateway 13 over a pre-determined access technology, such as CATV.

Additionally, even though gateway 13 is capable of determining the appropriate premises technology with which to communicate with a premises device, such as TV 42, gateway 13 does not have a choice of which premises technology is acceptable for a service. Rather, gateway 13 must use whatever type of link or premises technology connects gateway 13 to the target premises device. Furthermore, gateway 13 does not determine and use a second premises technology if a first is deemed not acceptable for a service.

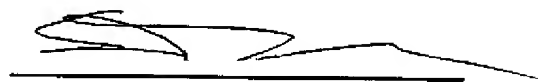
Applicant notes that the Examiner admits that Edson is silent about basing acceptability on the type of service. The Examiner improperly applies hindsight reasoning using the claims as a template to reach the conclusion that such a limitation is obvious. Regardless, even if the Examiner believes such a limitation to be obvious, he is still required to present a reference or combination of prior art references to support his assertion. As such, the Examiner's rejection fails to support a prima facie case for obviousness.

Independent claim 83 contains limitations similar to those of claim 76 and is therefore allowable over the art of record for at least the same reasons as claim 76. The remaining dependent claims, while separately allowable over the art of record, depend from otherwise allowable independent claims. Applicant therefore refrains from a discussion of the dependent claims for the sake of brevity.

CONCLUSION

The claims in their present form are allowable over the art of record. Applicant therefore respectfully requests allowance of the claims. Any fees in addition to those submitted may be charged to deposit account 21-0765.

Respectfully submitted,



Stephen S. Roche, Reg. No. 52,176
Setter Roche LLP
Telephone: (720) 562-2280

Correspondence address:

CUSTOMER NO. 28004

Attn: Harley R. Ball
6391 Sprint Parkway
Mailstop: KSOPHT0101-Z2100
Overland Park, KS 66251-2100